



CONTANGO OIL AND GAS, INC.

187 IBLA 262

March 31, 2016



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CONTANGO OIL AND GAS, INC.

IBLA 2014-169

March 31, 2016

Appeal from a March 7, 2014, Notification of Incidents of Noncompliance issued by the Bureau of Safety and Environmental Enforcement with respect to offshore operations in the Gulf of Mexico. OCS-G 30114.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases:
Incidents of Noncompliance: Generally--Outer Continental
Shelf Lands Act: Generally--Outer Continental Shelf Lands
Act: Oil and Gas Leases

If BSEE, as the Secretary's designate, finds that a lessee or operator has not followed any requirement of the Outer Continental Shelf Lands Act, the regulations, an order, or lease term for any Federal oil or gas lease, then it may issue an Incident of Noncompliance, stating the nature of the violation and how to correct it.

2. Oil and Gas Leases: Generally--Oil and Gas Leases: Burden
of Proof--Oil and Gas Leases: Incidents of Noncompliance:
Generally--Outer Continental Shelf Lands Act:
Generally--Outer Continental Shelf Lands Act: Oil and Gas
Leases

In challenging an Incident of Noncompliance, the burden is on the appellant to demonstrate, by a preponderance of the evidence, that the agency committed a material error in its factual analysis, or that its decision is not supported by a record showing the agency gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made. Because the Department is entitled to rely upon the reasoned analysis of its experts in matters within their expertise, the Board will not set an Incident of

Noncompliance aside absent a showing of error by a preponderance of the evidence; a mere difference of opinion will not suffice to reverse the reasoned opinions of the Department's technical staff.

3. Oil and Gas Leases: Generally--Oil and Gas Leases:
Incidents of Noncompliance: Generally--Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Oil and Gas Leases

Whether a violation constitutes a threat to the environment, health, or safety need not be a consideration when the agency is determining if a violation of the regulations has occurred, resulting in the issuance of an Incident of Noncompliance. It is when the agency decides to assess a civil penalty based on an Incident of Noncompliance that the agency may take into account whether there is any threat to life, the environment, or property.

APPEARANCES: A. Carl Isaac, Houston, Texas, for appellant; Scott Loveless, Esq., Office of the Solicitor, United States Department of the Interior, Washington, D.C., for the Bureau of Safety and Environmental Enforcement.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

Contango Oil and Gas, Inc. (Contango), appeals from a March 7, 2014, Notification (Notification) of Incidents of Noncompliance (INCs) issued by the Bureau of Safety and Environmental Enforcement (BSEE). The Notification identified 18 INCs for Outer Continental Shelf (OCS) Lease No. OCS-G 30114, H Platform, Eugene Island Block 11, based on an on-site inspection by BSEE's Measurement Inspection Unit. For the reasons explained below, we affirm BSEE's Notification.

Background

After an on-site inspection, BSEE issued a Notification of INCs, dated March 7, 2014, to Contango. The 18 INCs identified are grouped into 4 categories, as follows:¹

- (1) Six "M-129" INCs,² citing Contango's failure to comply with 30 C.F.R. § 250.1202(k)(1) and (2), which require lessees to take liquid

¹ Each of the 18 INCs was identified as a "Warning" requiring correction. See Administrative Record (AR) Tab 2 at 10-22.

hydrocarbon samples “continuously proportional to flow or daily” (for liquid hydrocarbon allocation meters) and “proportional to the flow only” (for turbine meters).³

- (2) Nine “M-200” INCs, citing Contango’s failure to comply with 30 C.F.R. § 250.1203(b)(2), which requires lessees to “[d]esign, install, use, maintain, and test measurement equipment to ensure accurate and verifiable measurement” of gas.
- (3) One “M-301” INC, citing Contango’s failure to comply with 30 C.F.R. § 250.1203(b)(3), which requires lessees to “[e]nsure that the [gas] measurement components demonstrate consistent levels of accuracy throughout the system.”
- (4) Two “M-201” INCs, citing Contango’s failure to comply with 30 C.F.R. § 250.1203(b)(5), which requires lessees to “[t]ake proportional-to-flow or spot samples upstream or downstream of the [gas] meter at least once every 6 months.”

In a letter dated April 20, 2014, Contango requested a meeting with BSEE, and requested that BSEE rescind the INCs. Contango stated that “its measurement practices produce accurate allocations,” and the procedural deficiencies identified by the INCs “have no material impact on measurement accuracy.” AR Tab 6 at 25-38. BSEE replied on April 8, 2014, concluding that Contango had not submitted sufficient evidence to mitigate the INCs, and therefore denied Contango’s request to rescind them. AR Tab 8 at 51-53. Thereafter, on April 29, 2014, Contango representatives met with BSEE employees to discuss the INCs. AR Tabs 10 and 11

² “M-129” refers to a potential incident of noncompliance (PINC) number. BSEE maintains a list of PINCs, which the agency derived from 30 C.F.R. Part 250, each of which has a unique identifier. The “M” in the identifier, for example, relates to production measurement or site security. See http://www.bsee.gov/uploadedFiles/BSEE/Inspection_and_Enforcement/Enforcement_Programs/2015_PINC_Lists/M%20PINC%20M100-M310%20Final%205.15.pdf (last visited Mar. 29, 2016).

³ After receiving the INCs, Contango requested and received approval from BSEE to use an alternative method for measuring liquid hydrocarbons, in lieu of proportional flow sampling as required by 30 C.F.R. § 250.1202(k)(1) and (2). See AR Tab 5 at 24 (email from Younger to Johnson, dated Mar. 25, 2014); AR Tab 7 at 39, 41 (copies of the M-129 INCs returned to BSEE and noting the date these violations were corrected as Mar. 26, 2014); Answer at 2 (“[O]n March 26, 2014, BSEE approved the alternate method of taking daily base sediment and water samples and monthly spot samples in lieu of the method required by 30 C.F.R. § 250.1202(k)(1) and (2).”).

at 56. Contango again requested that BSEE rescind the INCs based on the company's view that none of the violations noted in the INCs had a material impact on measurement or reflected any inaccuracy of measurement. *Id.* On May 1, 2014, BSEE informed Contango that "all INCs would stand and would not be rescinded." *Id.*

On May 5, 2014, Contango timely filed its Notice of Appeal of the 18 INCs. AR Tab 12. It filed its Statement of Reasons (SOR) on May 28, 2014. BSEE filed an Answer on July 1, 2014.

Discussion

[1] This appeal is governed by the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331-1356b (2013 Supp.), and its implementing regulations. The OCSLA authorizes the Department of the Interior to issue and manage leases on the OCS for oil and gas exploration, development, and production. Section 5 of the statute directs the Secretary of the Interior to administer OCS leases, and promulgate regulations "as may be necessary to carry out" the statute. 43 U.S.C. § 1334(a). The regulations applicable to offshore oil and gas operations are found at 30 C.F.R. Part 250. As explained in the regulations, all OCS operations must "[b]e conducted according to the [OCSLA], the regulations in this part, BSEE orders, the lease or right-of-way, and other applicable laws, regulations, and amendments." 30 C.F.R. § 250.101(a). If BSEE, as the Secretary's designate, finds that an OCS lessee or operator has not followed any requirement of OCSLA, the regulations, an order, or lease term for any Federal oil or gas lease, it properly issues an INC, by identifying the nature of the violation and how to correct it. *See* 30 C.F.R. § 250.101; *see also* *Island Operating Co.*, 186 IBLA 199, 206-07 (2015), *appeal filed*, *Island Operating Co. v. Jewell*, 6:16-cv-00145-RFD-PJH (W.D. La. Jan. 29, 2016); *Apache Corp.*, 183 IBLA 273, 288 (2013). Such INCs are appealable to this Board. *See* 30 C.F.R. §§ 250.104, 290.2.

Relevant to the case before us, among the requirements imposed by the regulations on lessees and operators are requirements to measure liquid hydrocarbons and gas in accordance with specific procedures to ensure accurate and verifiable measurements. *See* 30 C.F.R. §§ 250.1202, 250.1203. Here, BSEE's INCs identified 18 violations of these regulations. In its SOR, Contango does not argue that the INCs were erroneous. Rather, Contango argues that the INCs are citing the company for minor infractions. *See* SOR at 3-5. Contango states: "None of the 18 INCs represent a threat to the [e]nvironment, [h]ealth, or [s]afety at Eugene Island Block 11. None of the 18 INCs represent a breach in the measurement, allocation, or royalty determination related to the production at Eugene Block." *Id.* at 2. Contango further states that it "has been on the path of continuous improvement in its regulatory performance for the past three years, . . . receiv[ing] a total of 5 INC[s] across our facilities in the [Gulf of Mexico]." *Id.* at 1.

In its Answer, “BSEE acknowledges that none of the 18 INCs at issue here are serious threats to health, safety, or the environment. All 18 INCs are relatively minor violations arising from faulty recordkeeping or from failure to follow proper administrative procedures prior to making changes in operations.” Answer at 1. BSEE further acknowledges Contango’s efforts to improve and maintain its safety and compliance performance. *Id.* Nevertheless, BSEE states that the INCs all “represent genuine violations of BSEE regulations, with which Contango must comply but did not. These particular violations may not have been major, but the violated procedures and requirements are in place to prevent problems from becoming major.” *Id.*

With respect to the six M-129 INCs, Contango states that the violation had “no material impact on measurement accuracy.” SOR at 3. Contango further states that because BSEE subsequently approved the company’s alternative procedure for sampling and measuring liquid hydrocarbons, these INCs should be rescinded. *Id.* BSEE responds that inspections found error on the six meters in violation of the regulations. Answer at 2. BSEE further disagrees that the agency’s later approval of Contango’s alternative method of measurement has any bearing on the INCs, since such approval does not change the fact that Contango “was operating in violation of the regulations” at the time of the inspection and issuance of the INCs. *Id.*

Contango next argues that the violations identified by the nine M-200 INCs did not result in a “technical difference in the accuracy of the calibration.” SOR at 4. These INCs, Contango asserts, implicate a “minor transcription point” and “minor recording error” with no impact on measurement or measurement accuracy. *Id.* BSEE argues that even though the errors are “minor,” they “indicate a lack of care to detail in the measurement and recording process.” Answer at 3. BSEE states:

BSEE is in many ways dependent on the records maintained on the platform to properly perform its inspection duties. Where records representing the equipment “as installed” differ from the records representing the equipment “as verified” during an inspection, then the operator’s recordkeeping ability is undermined and the records are unreliable.

Id.

With respect to the one M-301 INC, Contango states “the seals were physically in place and functioning as required” and the error was a minor recording transposition. SOR at 5. BSEE again argues that, although the error is relatively minor, “it indicates a lack of care in the recordkeeping process and violates BSEE’s regulations.” Answer at 3.

Finally, Contango argues that the two M-201 INCs were written for “Bulk Separators, where multiple wells are routed simultaneously, so samples from these separators have no relevance to measurement and allocation accuracy.” SOR at 5. BSEE disagrees with Contango’s assertion that samples from the separators “have no relevance to measurement and allocation accuracy.” Answer at 4 (quoting Contango’s SOR). BSEE states: “[T]he fact that a meter was installed at each of these two locations indicates that there was a purpose for metering. If that purpose was not ‘measurement and allocation accuracy,’ it may have been a double check on flow totals or to provide a verification of total flows.” *Id.* BSEE argues that regardless of the purpose of the separators, Contango did not satisfy the regulatory requirement to take samples either upstream or downstream of each meter at least every 6 months. *Id.*

[2] In challenging an INC, the burden is on the appellant to demonstrate, by a preponderance of the evidence, that BSEE committed a material error in its factual analysis, or that its decision is not supported by a record showing that BSEE gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made. *Apache Corp.*, 183 IBLA at 288 (citing *Black Elk Energy Offshore Operations, LLC*, 182 IBLA 331, 341 (2012)). Because the Department is entitled to rely upon the reasoned analysis of its experts in matters within their expertise, the Board will not set an INC aside absent a showing of error by a preponderance of the evidence; a mere difference of opinion will not suffice to reverse the reasoned opinions of the Department’s technical staff. *See Pacific Offshore Operators, Inc.*, 165 IBLA 62, 77 (2005); *Taylor Energy Co.*, 148 IBLA 286, 293-94 (1999). We find in this case that Contango has not met its burden.

[3] Contango admits to the violations identified by the INCs, and cites to no error in BSEE’s factual analysis. Instead, Contango disagrees with BSEE’s decision to issue the INCs and argues that the INCs should be rescinded because the errors were minor and did not result in any threat to the environment, health, or safety. Contango, however, cites to no legal authority for its position. Under the applicable regulations, operators and lessees are required to comply with *all* regulatory requirements, including the regulations at issue in this case related to the measurement of liquid hydrocarbons and gas. *See* 30 C.F.R. § 250.101(a); *see also Apache Corp.*, 183 IBLA at 288. There is no exception in the regulations for “minor” violations. Further, BSEE’s issuance of the Notification of INCs is consistent with the agency’s guidance to inspectors, which directs that an INC “must be issued to document” any violation of the regulations. *National Potential Incident of Noncompliance (PINC) and Guidelines List* (May 2015) at unpaginated 2 (Preface).⁴

⁴ Available at http://www.bsee.gov/uploadedFiles/BSEE/Inspection_and_Enforcement/Enforcement_Programs/2015_PINC_Lists/PINC%20Introduction%205.15.pdf (last visited Mar. 29, 2016).

Moreover, whether a violation constitutes a threat to the environment, health, or safety need not be a consideration when BSEE is determining if a violation of the regulations has occurred, resulting in the issuance of an INC. It is when BSEE decides to assess a civil penalty based on an INC (which occurs after an INC has issued), that the agency may take into account whether there is any threat to life, the environment, or property. *See* 43 U.S.C. § 1350(b)(2) (2012) (The Secretary may assess a civil penalty, without allowing for an opportunity for corrective action, if a violation “constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.”); 30 C.F.R. § 250.1404(b), (c) (A civil penalty is appropriate if, among other situations, a violation is a “threat of serious, irreparable, or immediate harm or damage” or “cause[s] serious, irreparable, or immediate harm or damage to life.”).

Conclusion

Based on the above, we can find no error in BSEE’s decision to issue the Notification of INCs. Contango does not dispute that the violations occurred; it simply disagrees with BSEE’s decision to issue the Notification of INCs. As such, Contango has not shown that BSEE’s decision was premised on an erroneous analysis or unsupported by the record. We thus conclude that Contango has failed to satisfy its burden to demonstrate error in BSEE’s decision and BSEE’s issuance of the INCs was reasonable and proper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we affirm BSEE’s March 7, 2014, Notification of INCs.

_____/s/
Amy B. Sosin
Administrative Judge

I concur:

_____/s/
James F. Roberts
Deputy Chief Administrative Judge